

§ 404.2

This act requires each agency to promulgate regulations that specify the schedule of fees for processing FOIA requests and the guidelines when fees may be waived. It applies only to records and information of the Commission which are in the Commission's custody.

§ 404.2 General policy.

Public requests for information from the records of the American Battle Monuments Commission should be sent to the Freedom of Information Representative, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Ave., NW., Washington, DC 20314. They may also be sent to its field offices at the addresses listed below:

(a) Officer-in-Charge, European Office, American Battle Monuments Commission, APO New York 09777.

(b) Officer-in-Charge, Mediterranean Office, American Battle Monuments Commission, APO New York 09794.

(c) Superintendent, Manila American Cemetery, FPO San Francisco 96528.

(d) Superintendent, Corozal American Cemetery, The American Battle Monuments Commission, Attn: AFZU-AG-CRB, Drawer #38, APO Miami, FL 34004-5000.

(e) Superintendent, Mexico City National Cemetery, American Battle Monuments Commission, c/o U.S. Embassy, Mexico, P.O. Box 3087, Laredo, TX 78044-3087.

§ 404.3 Response to requests.

(a) Except for records and information exempted from disclosure by 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them.

(b) Requests for information from the public will be honored within ten working days unless the confidentiality of such information is protected by law, or when it is necessary to search and/or collect records in separate offices or another office of the Commission, which would usually require more than ten working days.

(c) Whenever information cannot be dispatched within ten work days after receipt of request, an interim reply will be sent informing the requester of the status of the request.

36 CFR Ch. IV (7-1-00 Edition)

(d) The records of the ABMC may be examined and copied between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday under the supervision of the Freedom of Information representative.

§ 404.4 Denial of access.

(a) Letters denying confidential information will be dispatched within ten working days of receipt of the request and will be signed by one of the below listed personnel:

(1) Officer-in-Charge, ABMC European Office.

(2) Officer-in-Charge, ABMC Mediterranean Office.

(3) Directors, ABMC Washington Office.

(4) Secretary, ABMC.

(b) Letters denying access to information will:

(1) Provide the requester with the reason for denial.

(2) Inform the requester of his or her right to appeal the denial within 30 days.

(3) Give the name of the official to whom the appeal may be sent.

(c) If an unusual circumstance delays a decision concerning access to information, the requester will be informed of the delay within ten working days of the request's initial receipt. In no case will the decision be delayed more than 20 working days from initial receipt of the request.

(d) A copy of each denial of information will be furnished to the Secretary, ABMC at the time of its dispatch.

§ 404.5 Appeals.

(a) The Secretary is the appellate authority for all denials except those which he authors. The Chairman is the appellate authority for denials authored by the Secretary.

(b) The requester will be informed of the decision on his or her appeal within 20 working days after its receipt. If the denial is upheld, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom of Information Act.

(c) In the event a court finds that the American Battle Monuments Commission has arbitrarily and capriciously withheld information from the public and a subsequent Office of Personnel

American Battle Monuments Commission

§ 404.7

Management investigation finds agency personnel responsible, these personnel will be subject to disciplinary action by the American Battle Monuments Commission.

§ 404.6 Fees to be charged.

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants. In those instances where ABMC deems it necessary to charge a fee, ABMC shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made available under the FOIA. The Freedom of Information Representative shall charge the fees stated in paragraphs (a) through (g) of this section. The Freedom of Information Representative shall, however, waive the fees in the circumstances stated in § 404.9. The specific fees which ABMC shall charge the requester when so required by the FOIA are as follows:

(a) *Manual searches of records.* \$9.00 per hour for clerical personnel; \$15.00 per hour for supervisory personnel.

(b) *Computer searches for records.* Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed \$12.00 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be \$.40 per page. The word "page" refers to paper copies of standard computer size, which normally are 11 x 15 inches.

(c) *Copying fee.* The machine copy fee for each page up to 8½ x 14 shall be \$.25 per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for commercial purposes.

(d) \$2.00 for each 8 x 10 inch black and white photograph.

(e) \$3.00 for each 8 x 10 inch color photograph.

(f) \$1.75 per cemetery booklet.

(g) \$1.50 per lithograph.

§ 404.7 Assessment and collection of fees.

(a) *Assessment of fees.* (1) ABMC shall assess interest charges on an unpaid bill starting on the 31st day following

the day on which the billing was dispatched. Once the fee has been received by ABMC, even if not processed, accrual of interest will cease. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date billing is sent.

(2) *Charges for unsuccessful searches.* If ABMC estimates that charges for an unsuccessful search may exceed \$10.00, it shall so inform the requester unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice shall temporarily suspend the ten day period for response by ABMC until a reply is received from the requester.

(3) *Aggregating requests.* Except for requests that are for a commercial use, ABMC shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC believes that a group of requesters are acting in concert and attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, ABMC shall aggregate any such requests and charge accordingly. One element to be considered is the time period in which the requests have been made. Before aggregating requests from more than one requester, ABMC must be reasonably certain that the requesters are acting specifically to avoid payment of fees. In no case shall ABMC aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* ABMC shall not require payment for fees before work has commenced or continued on a request unless:

(i) ABMC estimates that the charges may exceed \$25.00. In such an event, ABMC shall notify the requester of the estimated cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee within 30 days of the date